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PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN W. COMISKEY & BARRETT O. COMISKEY

Appeal No. 95-3656
Application 08/240,985¹

ORDER REMANDING TO EXAMINER

By decision dated August 8, 1996, a merits panel of the Board of Patent Appeals and Interferences (Board) sustained the examiner's rejection of claims 2, 6 through 11 and 17 through 19 under the second paragraph of 35 U.S.C. §112, while refusing to sustain both of the examiner's rejections under Section 103 on the basis that the claims were so indefinite that these art rejections could not be evaluated. Furthermore, pursuant to its authority under 37 CFR 1.196(b), The Board entered a new rejection of claims 1, 2, 6 through 13 and 16 through 19 under 35 U.S.C. §112, second paragraph.

¹ Application for patent filed May 11, 1994.

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In response to this decision, and in accordance with 37 CFR 1.197, appellants, on August 12, 1996, filed an amendment before the examiner (Paper No. 23), which was entered. This amendment contained changes to the claims which alleviated the instances of indefiniteness that were set forth in the Board's new rejection under 37 CFR 1.196(b), and all but one of the matters of indefiniteness that were the subject of the examiner's rejection, which the Board had sustained.

At this juncture, therefore, no outstanding rejections, art or otherwise, remain with regard to claims 1, 2, 6 through 13 and 16. The Section 112 rejection, however, remains against independent claim 17 and dependent claims 18 and 19, because the indefiniteness problem was not cured by the amendment. The examiner now has returned the application to the Board for the purpose of making final its affirmance of the Section 112 rejection of claims 17 through 19 (Paper No. 24).

However, it is noted that the attorney's name and address does not appear on the face of Paper No. 24, which would suggest that this paper was not mailed to him, as it should have been.

Accordingly, it is

ORDERED that the application is remanded to the examiner for the purpose of mailing a copy of Paper No. 24 to the

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appellants' attorney, and for any other action that may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal.

BOARD OF PATENT APPEALS
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By: 

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